Chi. W. D. Ry. Co., 87 Ill. 317; *Lake Roland, etc. R. Co.* v. *Baltimore*, 77 Md. 352, 20 L. R. A. 126; See WILGUS' CORP. CASES, Vol. 1, p. 706. For discussion of term "franchise" in this regard, see *Morgan* v. *State of Louisiana*, 93 U. S. 223, 23 L. Ed. 860. In the principal case the term "franchise" as used in the constitutional amendment seems to be a right in the street for a permanent time under contract, while the license issuable by the council is one revocable at any time. When used in that way, the case seems clearly correctly decided.

DAMAGES—LIQUIDATED DAMAGES—DISCOUNTS.—Plaintiff leased certain machines to a shoe company at a specified rental to be paid at the ends of the months succeeding those in which they were earned. Plaintiff agreed that, if the lessee should pay on or before the fifteenth of the succeeding month, a discount of fifty per cent would be granted. The lessee became bankrupt with three months' rental unpaid. Plaintiff claims the full amount is due from the lessee's estate. *Held* (ADAMS, Cir. J., dissenting), the agreed rentals were the actual debt and the fifty per cent was only a discount. Therefore, plaintiff's claim was valid. *United Shoe Machinery Co.* v. *Abbott* (1908), — C. C. A., 8th Cir. —, 158 Fed. Rep. 762.

Circuit Judge ADAMS dissented from this decision on the ground that the lessor had previously accepted fifty per cent of the agreed rental without objection even when it was not paid in time to entitle the lessee to the discount; therefore the first fifty per cent should be considered as the actual debt due and the additional fifty per cent as a penalty which should not be enforced. It is generally held, that, where a large sum is to be paid upon the non-payment of a smaller sum, the larger sum is a penalty if in excess of legal interest. *Clark, Austin & Smith* v. *Kay*, 26 Ga. 403. The question to be decided in such cases is, whether the larger or the smaller sum is the debt actually due. If the former, the provision is enforceable as a discount; if the latter, it is a penalty and therefore unenforceable. Much conflict naturally is found among the authorities in construing such contracts. The principal case is supported by *Mo. Edison Elec. Co.* v. *Steinberg Hat & Fur Co.*, 94 Mo. App. 543, 68 S. W. 383, but is probably in conflict with *Goodyear Co.* v. *Selz, Schwab & Co.*, 157 Ill. 186, 41 N. E. 625. For further discussion, see *Carter* v. *Corley, use, etc.*, 23 Ala. 612; *Longworth* v. *Askren*, 15 O. St. 370; *Cairns* v. *Knight*, 17 O. St. 69; *Berrinkott* v. *Traphagen*, 39 Wis. 219.

DEATH BY WRONGFUL ACT—STATUTE—CONSTRUCTION—DEATH OUTSIDE THE STATE—RIGHT TO SUE.—Illinois Laws 1853, p. 97, § 1, provides that on death by wrongful act the person or corporation which would have been liable for the injury, if death had not ensued, shall be liable notwithstanding the death of the person injured. By-Laws 1903, p. 217, a proviso was added to section 2 of the former act, declaring that no action should be brought or prosecuted in Illinois to recover damages for death occurring outside the state. Action was brought for a wrongful injury to plaintiff's intestate,